

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

In re:)	
)	
DENNIS RAY JOHNSON, II, et. al.)	Chapter 11
)	Case No. 3:16-bk-30227
Debtor-in-Possession.)	

**STIPULATION CONCERNING TRUSTEE’S MOTION FOR ENTRY OF AN ORDER:
(I) APPROVING SALE OF PROPERTY FREE AND CLEAR OF LIENS AND
ENCUMBRANCES; (II) ASSUMING AND ASSIGNMENT LEASES AND EXECUTORY
CONTRACTS; AND (III) GRANTING RELATED RELIEF (ECF NO. 527)**

RE: JIM LEWIS

Thomas H. Fluharty, Chapter 11 Trustee (“Trustee”) for the bankruptcy estates of Dennis Ray Johnson, II, Appalachian Mining & Reclamation, LLC, Green Coal, LLC, Redbud Dock, LLC, Producer’s Land, LLC, Producer’s Coal, Inc., Southern Marine Terminal, LLC, Southern Marine Services Limited Liability Company, DJWV1, LC, DJWV2, LLC, Elkview Reclamation & Processing, LLC, Moussie Processing, LLC, The Little Kentucky Elk, LLC, and Sabbatical, Inc. (collectively, the “Debtors”), administratively consolidated at Case Number 3:16-bk-30227, Stella Natural Resources, Inc. (the “Buyer”), and Jim Lewis, DB Coal Mining, LLC, Kansas Coal, LLC, DB Land, LLC (collectively referred to as “Lewis”) (“Lewis,” and together with the Trustee and Stella, the “Parties”); by and through their respective counsel, hereby stipulate and agree as follows:

RECITALS

WHEREAS, on May 25, 2017, the Trustee filed the Motion for Entry of an Order: (I) Approving Sale of Property Free and Clear of Liens and Encumbrances; (II) Assuming and Assigning Leases and Executory Contracts; and (III) Granting Related Relief (Dkt. No. 527) (the

“Sale Motion”), pursuant to which the Trustee, on behalf of the Debtors, seeks to assume and assign pursuant to Sections 365(a) and 365(f)(2) of the Bankruptcy Code certain executory contracts and unexpired leases to the Buyer, including Lease 5 and Lease 6 as more specifically described in Schedule 2.1(b) of the May 25, 2017 Asset Purchase Agreement (“APA”);

WHEREAS, Lewis holds an overriding royalty interest under Lease 5 and Lease 6;

WHEREAS, the Trustee provided for a zero-cure amount to Lewis for assumption of Lease 5 and Lease 6;

WHEREAS, Lewis disputes the proposed cure amount and asserts that the sum of \$36,824.94 is due for unpaid royalties;

WHEREAS, the Parties seek to avoid the costs and uncertainty attendant to litigation of the Disputed Matters and, after good faith and arms-length negotiations, have agreed to settle the disputed claim on the terms and conditions set forth in this Stipulation.

STIPULATION AND AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby STIPULATE and AGREE as follows:

1. Lewis consents to the assumption and assignment of Lease 5 and Lease 6 to the Buyer, subject to the approval of the Bankruptcy Court.
2. The Trustee agrees to amend the APA attached to the Sale Motion to amend the proposed cure amount payable to Lewis for his overriding royalty interest on Lease 5 and Lease 6 to \$36,824.94.
3. The cure amount payable to the lessors of Lease 5 and Lease 6 in the amount of \$108,000 as stated in the APA shall remain the same and is not affected by this Stipulation.

4. Buyer agrees to pay one-half of the proposed cure amount to Lewis at closing, and to pay the remaining half in six (6) equal monthly installments beginning on the first month anniversary of the closing and each subsequent month's anniversary thereafter until the proposed cure amount is paid in full.

5. This Court shall retain exclusive jurisdiction with respect to any matter arising from or related to the implementation, interpretation, or enforcement of this Stipulation.

STIPULATED AND AGREED:

THOMAS H. FLUHARTY, CHAPTER 11
TRUSTEE

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